

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13291 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

SIPAHILAL BANVARILAL

Versus

M/S PATEL TEXTILE

Appearance:

1. Special Civil Application No. 13291 of 1994
MR TR MISHRA for Petitioner No. 1
Mr. K.B.Nayak for M/S TRIVEDI & GUPTA for Respondent No. 1
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CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 14/10/2002

ORAL JUDGEMENT

Heard learned advocate Mr.T.R. Mishra for the petitioner and Mr. K.B.Nayak for M/s. Trivedi & Gupta for

the respondent. By means of this petition, the petitioner has challenged the award dated 4.5.1994 made by the labour court, Ahmedabad in Reference (LCA) No. 786 of 1993. Under the impugned award, the labour court has dismissed the reference made by the second party.

2. In this petition, rule was issued by this court on 23.2.1995 and it was made returnable on 5.4.1995.

3. Learned advocate Mr. T.R. Mishra for the petitioner has submitted that the services of the petitioner were illegally terminated and during the pendency of the conciliation proceedings, as per the offer made by the respondent, the petitioner had gone for resuming the duties at the office of the respondent but he was not allowed to resume the duties. He has also submitted that the labour court has committed gross error in not appreciating the evidence of the workman. He has also submitted that the labour court has committed gross error in relying upon the evidence of the respondent. He has also submitted that the petitioner was victimized by the respondent employer and the termination of his services was the result of such victimization but that aspect has not been considered by the labour court and, therefore, the award made by the labour court is required to be quashed and set aside.

4. On the other hand, learned advocate Mr. Thakar appearing for the respondent has submitted that the labour court was right in appreciating the oral and documentary evidence before it; the labour court has rightly come to the conclusion that there was no termination of the services of the petitioner as alleged. He has also submitted that the respondent establishment is not working at present and it has already been closed and it has been handed over to the other employer by the present respondent and, therefore, there was no possibility of reinstatement. In short, it is his submission that the award made by the labour court is just and proper and same does not require any interference of this court in exercise of the powers under Article 226 and/or 227 of the Constitution of India.

5. I have considered by the submissions made by the learned advocates for the parties. I have also perused the award made by the labour court. As per the facts of the statement of claim filed by the petitioner - second party before the labour court, date of termination of his service is 25th August, 1982 and thereafter industrial dispute raised by the second party workman was referred

to by the authority for adjudication. Before the labour court, written statement was filed by the first party respondent and certain documents were also produced before the labour court. Before the labour court, the petitioner was examined at Exh. 11 and the oral evidence of the witness Badrinath Gandadal for the workman was recorded at Exh. 14. Thereafter, on behalf of the respondent establishment, one witness Kirtibhai J. Patel was examined at Exh. 29 and the another witness Ramanlal B. Prajapati was examined at Exh. 39 on behalf of the respondent. Thereafter, the labour court has examined the matter on merits by considering the statement of claim filed by the workman as well as the oral and documentary evidence on record. Thereafter, the labour court has come to the conclusion that the petitioner was working as a Badli workman and he has not completed 240 days continuous service. It has also been considered by the labour court that for that, the workman has not made any averment in the statement of claim filed by the workman. Before the labour court, the respondent has made it clear that the services of the petitioner were not terminated but on 9.8.1982, the petitioner himself left the job without informing the respondent and, therefore, case of termination put forward by the petitioner is not correct. In view of the offer made by the employer before the conciliation officer in conciliation proceedings, the petitioner reported for duty on 25th January, 1983 but while working, the work was not done properly and therefore, the petitioner was scaled and, therefore, the petitioner left the job at his own. The labour court has discussed entire evidence led before it and ultimately come to the conclusion that the present reference has been made by the petitioner only with a view to get some benefit of back wages but he is not interested in job. The labour court has also considered that at the relevant time, establishment has already been closed and it was handed over to some other person. The labour court after appreciating the entire evidence before it, found that it is not the termination as alleged by the petitioner but it was abandonment of job by the petitioner on his own and, therefore, workman is not entitled for the relief of reinstatement and, therefore, the labour court rejected the reference of the petitioner by impugned award dated 4.5.1994.

6. After perusing the award made by the labour court, I have also perused the oral evidence of the petitioner SIPAHILAL BANVARILAL at Exh. 11, oral evidence of the witness for the petitioner Shri Badrinath at Exh. 14, oral evidence of the witness Shri Kirtibhai J. Patel for the respondent first party at Exh. 29 and

the oral evidence of the witness for the respondent Shri Ramanlal B. Prajapati at Exh. 39. In his oral evidence at Exh. 29, the witness for the respondent Shri Kirtibhai J. Patel has deposed that the workman has left the job on his own on 9.8.1982 and thereafter, letter was sent to the workman on 20.8.1982 which letter has been produced at Exh. 30 before the labour court. Another letter was also sent to the petitioner but he has not reported for work. Thereafter, during the course of his deposition before the labour court, an offer was made by the said witness that even on the date of deposition also, if the workman is prepared to resume the duty, the respondent is still prepared to allow him to resume the duties. In spite of such offer made by the respondent during the course of his oral evidence, the petitioner has not resumed the duty and has not reported for duty. According to the said witness, thereafter, one letter was written to the petitioner on 23.11.1982 but the petitioner has not reported for duty. Copy of the said letter is produced at Exh. 12. On 25.1.1983 also, similar offer was made and in view of that offer, the petitioner reported for work on 26.1.1983 but there was some mistake in the work of the workman which was pointed out to him and, therefore, the workman left the job and has not turned up in the establishment of the respondent. The respondent has immediately on 27.1.1983 written letter which is at Exh. 31 but he has not returned back for work. Therefore, considering the evidence of this witness as well as the reasons recorded by the labour court for rejecting the reference, according to my opinion, the labor court was right in coming to the conclusion that it is not a case of termination but on the contrary it is a case of abandonment of service. According to my opinion, the labour court was also right in appreciating the evidence of the petitioner as well as the respondent and in doing so, the labour court has not committed any error requiring interference of this court in exercise of the powers under Article 226 and/or 227 of the Constitution of India.

This Court is having very limited jurisdiction under Article 226 and/or 227 of the Constitution of India. It is settled position of law that the powers of this Court are very limited while examining the legality and validity of the award passed by the labour court.

In view of the above discussion, there is no substance in this petition and is required to be dismissed. Same is therefore dismissed. Rule is discharged accordingly with no order as to costs.

Dt.14.10.2002. (H.K. Rathod, J.)

Vyas